

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL ROBERT BYE,

Petitioner,

Civil No. 05-1702-TC

v.

FINDINGS AND
RECOMMENDATION

CHARLES DANIELS,

Respondent.

COFFIN, Magistrate Judge.

Petitioner, a federal inmate convicted in the Western District of Michigan and incarcerated at FCI Sheridan, filed a petition under 28 U.S.C. § 2241¹ alleging that he is "serving an illegal sentence since the one misdemeanor alleged conviction used to enhance his sentence was a 'Nolo Contendere' plea as a matter of law." Petitioner also alleges

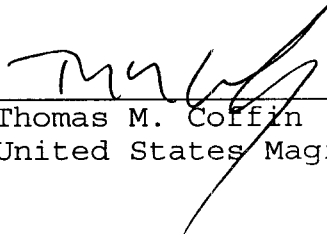
¹Petitioner did not pay the requisite filing fee or file an application to proceed in forma pauperis.

that his counsel was ineffective for not objecting to the allegedly improper enhancement of his sentence based on criminal history.

A federal prisoner challenging the execution of his or her sentence may file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the district of confinement. A federal prisoner challenging the legality of his or her federal conviction or sentence must file a motion to vacate sentence in the district of conviction pursuant to 28 U.S.C. § 2255.

Petitioner herein is challenging the legality of his sentence. Therefore, his petition should be denied without prejudice to file a motion under 28 U.S.C. § 2255 in the federal district court for the Western District of Michigan. This proceeding should be dismissed.

DATED this 30 day of November, 2005.



Thomas M. Coffin
United States Magistrate Judge